

EXHIBIT B

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

SPECTRUM SCIENTIFICS LLC, ET
AL.,

PLAINTIFFS,

VS.

CELESTRON ACQUISITION, LLC, ET
AL.,

DEFENDANTS.

CASE NO. CV-20-03642 EJD

SAN JOSE, CALIFORNIA

SEPTEMBER 5, 2024

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TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE EDWARD J. DAVILA
UNITED STATES DISTRICT JUDGE

A-P-P-E-A-R-A-N-C-E-S

FOR THE PLAINTIFFS: BRAUNHAGEY & BORDEN LLP
BY: MATTHEW B. BORDEN
KATIE KUSHNIR
351 CALIFORNIA STREET, 10TH FLOOR
SAN FRANCISCO, CALIFORNIA 94104

(APPEARANCES CONTINUED ON THE NEXT PAGE.)

OFFICIAL COURT REPORTER: IRENE L. RODRIGUEZ, CSR, RMR, CRR
CERTIFICATE NUMBER 8074

PROCEEDINGS RECORDED BY MECHANICAL STENOGRAPHY,
TRANSCRIPT PRODUCED WITH COMPUTER.

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A P P E A R A N C E S: (CONT'D)

FOR THE DEFENDANTS: FROST LLP
BY: JOSHUA STAMBAUGH
LAWRENCE LIU
10960 WILSHIRE BOULEVARD, SUITE 2100
LOS ANGELES, CALIFORNIA 90024

ALSO PRESENT: BRAUNHAGEY & BORDEN LLP
BY: OLIVIA SMITH, PARALEGAL

09:34AM 1 YOU.

09:34AM 2 THIS IS A MOTION FOR CLASS CERT, AND THERE'S A MOTION TO
09:34AM 3 STRIKE AS WELL. AND I MUST HAVE LEFT MY NOTES ON MY DESK.

09:34AM 4 CAN YOU FIND THEM?

09:34AM 5 ALL RIGHT. THANK YOU.

09:34AM 6 MR. BORDEN, WOULD YOU LIKE TO BE HEARD AS TO THE MOTION
09:34AM 7 FOR CLASS CERT? MY SENSE IS THAT THERE'S GOING TO BE SOME
09:34AM 8 OVERLAP FROM THE DEFENSE ABOUT THAT, PRIMARILY ABOUT DR. ZONA'S
09:34AM 9 REPORT. AND THAT'S REALLY WHAT I HAVE SOME QUESTIONS ABOUT,
09:34AM 10 TOO, DR. ZONA'S REPORT REGARDING METHODOLOGY, REGARDING
09:35AM 11 DIFFERENT STRATEGIES THAT HE ENGAGED.

09:35AM 12 I'M CURIOUS ABOUT, I'M CURIOUS ABOUT PCE, I AM CURIOUS
09:35AM 13 ABOUT DEMAND CONTROL, I'M CURIOUS ABOUT 16.7 PERCENT. IS THIS
09:35AM 14 ARBITRARY? WHERE DID THAT COME FROM? IS THERE FOUNDATION FOR
09:35AM 15 THAT?

09:35AM 16 I'M JUST GIVING YOU A HEADS UP ON SOME OF THE ISSUES THAT
09:35AM 17 TICK OFF AS I LOOK AT HIS REPORT AND TRYING TO ANALYZE THAT.

09:35AM 18 I'M CURIOUS WHAT DOES, IF WE ADD A PCE VARIABLE, WHAT DOES
09:35AM 19 THAT DO? DID HE DO THAT ANALYSIS? WHAT IS THE RESULT OF THAT?
09:35AM 20 AND IF WE PUT IN DEMAND CONTROL INTO HIS ANALYSIS, HOW DOES
09:35AM 21 THAT CHANGE HIS, HIS REGRESSION MODEL, IF AT ALL?

09:36AM 22 SO THOSE ARE SOME OF THE HIGH POINTS THAT I KNOW YOU'LL BE
09:36AM 23 ABLE TO ANSWER FOR US.

09:36AM 24 HAVING SAID THAT, HOW WOULD YOU LIKE TO PROCEED?

09:36AM 25 MR. BORDEN: I WOULD LIKE TO PROCEED AND SORT OF

09:37AM 1 MR. BORDEN: SURE. DIFFERENT REPORT. DIFFERENT
09:37AM 2 CASE. DIFFERENT METHODOLOGY.

09:37AM 3 THE COURT: YES, OF COURSE.

09:37AM 4 MR. BORDEN: BUT I THINK THERE'S EVEN A MORE
09:37AM 5 FUNDAMENTAL POINT, WHICH IS PROBABLY THE BEST AND MOST
09:37AM 6 COMPELLING EVIDENCE OF CLASSWIDE IMPACT, IS THE EVIDENCE OF ALL
09:37AM 7 OF THESE ANTITRUST VIOLATIONS THAT WE PUT INTO THE RECORD,
09:37AM 8 WHICH WERE ESSENTIALLY UNREBUTTED. THEY DID NOT DISPUTE THEM.
09:37AM 9 THEY DON'T DISPUTE THAT THEY ENGAGED IN THIS CONDUCT. THEY
09:38AM 10 DON'T ADDRESS OUR EVIDENCE IN ANY WAY, AND THAT'S REALLY
09:38AM 11 IMPORTANT BECAUSE EXPERTS CAN KIND OF THEORIZE WHATEVER THEY
09:38AM 12 WANT, BUT THEY CAN SAY SOMEBODY HAS MARKET POWER, THEY CAN SAY
09:38AM 13 SOMEBODY DOES THIS OR THAT, BUT THE WHOLE POINT OF AN ANTITRUST
09:38AM 14 VIOLATION IS TO RAISE THE PRICE ON EVERYBODY. AND THE
09:38AM 15 DEMONSTRATION OF MARKET POWER IS WHEN THEY DO THINGS LIKE
09:38AM 16 RESTRICT SUPPLY AND RAISE PRICE, AND WE HAVE EMAILS DOCUMENTING
09:38AM 17 THAT VERY THING IN THE FLESH.

09:38AM 18 SO TO -- PUTTING THE THEORY ASIDE FOR A SEC, JUST THE
09:38AM 19 EVIDENCE IS SO COMPELLING IN THIS CASE AND IT'S ENTIRELY
09:38AM 20 UNDISPUTED IN THIS RECORD.

09:38AM 21 SO I THINK THAT'S ACTUALLY THE STARTING PLACE, AND IT
09:38AM 22 SOUNDS LIKE THE COURT HAS SOME, YOU KNOW, QUESTIONS ABOUT
09:38AM 23 DR. ZONA'S METHODOLOGY.

09:38AM 24 THE COURT: WELL, RIGHT. AND WHAT I'M SAYING IS --
09:38AM 25 AND YOU CITE IN YOUR PLEADINGS THE ORION CASE THAT YOU AND I

09:42AM 1 THAT'S WHERE HE COMES UP WITH THE 16.7 PERCENT. HE SAYS --

09:42AM 2 THE COURT: DOES HE SAY THAT?

09:42AM 3 MR. BORDEN: YEAH. AND THE 16.7 PERCENT IS BASED ON
09:42AM 4 THE SAME METHODOLOGIES THAT HE USED IN ORION, THE COURNOT
09:42AM 5 METHODOLOGY AND THE PIC METHODOLOGY, WHICH LOOK AT ANTITRUST
09:42AM 6 THEORY AND THE HISTORY OF CARTELS AND HOW MUCH MARKET SHARE
09:42AM 7 THEY HAVE AND HOW MUCH THEY'RE ABLE TO RAISE THE PRICE
09:42AM 8 DEPENDING ON HOW MANY PLAYERS ARE IN THE MARKET.

09:42AM 9 THE COURT: SO WHERE DID THE 16.7 COME FROM? WHAT
09:42AM 10 IS THE FOUNDATION FOR THAT?

09:42AM 11 MR. BORDEN: THAT'S THE COURNOT AND THE PIC MODELS
09:42AM 12 FROM DR. ZONA. IT'S THE SAME TECHNIQUE THAT HE USED IN ORION.
09:42AM 13 IT'S THE SAME TECHNIQUE THAT THE NINTH CIRCUIT AFFIRMED WHEN IT
09:42AM 14 LOOKED AT THE JUDGMENT IN ORION. IT SAYS THIS IS A PERFECTLY
09:42AM 15 FINE TECHNIQUE BECAUSE YOU DON'T HAVE A CLEAN PERIOD, YOU HAVE
09:43AM 16 TO USE SOMETHING, AND THESE ECONOMIC THEORIES ARE SOUND,
09:43AM 17 THEY'RE TESTED.

09:43AM 18 THE COURT: HE -- I'M SORRY. DID HE RUN THE THEORY
09:43AM 19 AND THEN DID THAT YIELD A 16.7 PERCENT, OR DID HE USE
09:43AM 20 16.7 PERCENT AND THEN DO HIS WORK?

09:43AM 21 DO YOU UNDERSTAND MY QUESTION?

09:43AM 22 MR. BORDEN: SO I THINK I UNDERSTAND YOUR QUESTION.
09:43AM 23 AND DR. ZONA DID THIS IN PIECES.

09:43AM 24 SO THE FIRST PIECE THAT HE DID IS HE SAID BETWEEN 2001 AND
09:43AM 25 2005, WHEN THE ACQUISITION HAPPENED, WHAT WAS THE -- WHAT

10:49AM 1 CROSS-CHECK --

10:49AM 2 MR. BORDEN: THE NINTH CIRCUIT AFFIRMED THE USE OF

10:49AM 3 COURNOT AND PIC DATA TO FIGURE OUT THE OVERCHARGE.

10:49AM 4 THE COURT: RIGHT.

10:49AM 5 MR. BORDEN: AND THAT IS THE SAME THING.

10:49AM 6 THE COURT: BUT THE 16.7 WASN'T USED IN ORION?

10:49AM 7 MR. BORDEN: 16 WAS A DIFFERENT QUESTION AND HE WAS

10:49AM 8 LOOKING AT ORION'S DATA IN PARTICULAR AS OPPOSED TO DATA ACROSS

10:49AM 9 THE CLASS.

10:49AM 10 THE COURT: SO THERE MIGHT BE A SMALL DISTINCTION

10:49AM 11 MAYBE BETWEEN ORION. I MEAN, YOU KEEP SAYING THE NINTH CIRCUIT

10:49AM 12 AFFIRMED THIS SO --

10:49AM 13 MR. BORDEN: BUT IT'S THE TECHNIQUE. THE TECHNIQUE

10:49AM 14 IS USING THE COURNOT DATA AND USING THE PIC DATA.

10:49AM 15 THE COURT: SURE. OKAY.

10:49AM 16 MR. BORDEN: THERE'S NO TECHNIQUE THAT I'M AWARE OF

10:49AM 17 OR THAT THEY'RE -- THE PERSON THAT THEY PAID TO CRITIQUE

10:50AM 18 DR. ZONA IS AWARE OF OTHER THAN USING COURNOT DATA AND PIC DATA

10:50AM 19 TO GENERATE.

10:50AM 20 THE COURT: OKAY. I DON'T THINK YOU QUARREL WITH

10:50AM 21 COURNOT AND PIC.

10:50AM 22 MR. STAMBAUGH: AS A WHOLE, NO. THE SPECIFIC

10:50AM 23 TECHNIQUE USED HERE HAS NEVER BEEN AFFIRMED BY ANY COURT EVER.

10:50AM 24 THE COURT: AND THE SPECIFIC TECHNIQUE HERE IS WHAT

10:50AM 25 IN YOUR VIEW?

10:50AM 1 MR. STAMBAUGH: IT IS TAKING WHAT YOU HAVE SAID IS
10:50AM 2 NOT A CLEAN BENCHMARK, COMPARING THE PRICES TO A 20-YEAR CLASS
10:50AM 3 PERIOD, AND THEN ARBITRARILY REDUCING IT BY 16.7 PERCENT
10:50AM 4 UNTETHERED TO ANY EMPIRICAL DATA.

10:50AM 5 THE COURT: AND, MR. BORDEN, THAT LAST PIECE, THE
10:50AM 6 16.7 PERCENT --

10:50AM 7 MR. STAMBAUGH: IT'S A PREDETERMINED OVERCHARGE.

10:50AM 8 THE COURT: WHAT IS THE CONNECTION? THAT'S THE
10:50AM 9 PIECE I'M CURIOUS ABOUT. IS IT UNTETHERED OR --

10:50AM 10 MR. BORDEN: IT IS NOT UNTETHERED. IT IS, IT IS --
10:50AM 11 AND IF YOU GO BACK TO PARAGRAPH 98, IT IS THE LOWEST AMOUNT OF
10:50AM 12 OVERCHARGE THAT THERE COULD BE. AND HE'S JUST -- HE'S PICKED
10:51AM 13 IT BECAUSE IT IS THE MOST CONSERVATIVE ESTIMATE OF WHAT THAT
10:51AM 14 OVERCHARGE COULD POSSIBLY BE.

10:51AM 15 THERE HAS TO BE SOME OVERCHARGE. THERE'S GOING TO BE AT
10:51AM 16 LEAST 16.7.

10:51AM 17 THE COURT: WHAT DID HE DO TO GET 16.7 PERCENT?

10:51AM 18 MR. BORDEN: SO HE --

10:51AM 19 THE COURT: WHAT WAS THE MATH TO GET THAT?

10:51AM 20 MR. BORDEN: THE MATH IS TWO THINGS: ONE IS HE
10:51AM 21 LOOKED AT THE COUNOT DATA --

10:51AM 22 THE COURT: OKAY.

10:51AM 23 MR. BORDEN: -- WHICH SAYS WHEN YOU HAVE A COLLUSION
10:51AM 24 AMONGST COMPETITORS, HOW MANY COMPETITORS ARE THERE, HOW MUCH
10:51AM 25 MARKET SHARE, HERE'S WHAT THE ECONOMICS TELLS US THE OVERCHARGE

10:51AM 1 SHOULD BE. SO THAT WAS METHOD ONE.

10:51AM 2 METHOD TWO IS THAT THERE IS ALL OF THIS DATA, THIS PIC
10:51AM 3 DATA, WHICH MY FRIEND DOESN'T QUARREL WITH, THAT SAYS, OKAY,
10:51AM 4 WELL, WE'VE OBSERVED DIFFERENT MARKETS, WE'VE OBSERVED WHAT
10:51AM 5 HAPPENS WHEN YOU HAVE A 70 PERCENT MARKET SHARE AND YOU'RE A --
10:52AM 6 YOU KNOW, YOU'RE THERE WITH, YOU KNOW, THREE OTHER PLAYERS, AND
10:52AM 7 WHAT HAPPENS WHEN YOU HAVE 40 PERCENT OF THE MARKET AND THERE'S
10:52AM 8 2 OTHER PLAYERS?

10:52AM 9 THE COURT: UNDERSTOOD.

10:52AM 10 MR. BORDEN: AND, AND --

10:52AM 11 THE COURT: AND DO YOU GET A NUMBER? WHAT DO YOU
10:52AM 12 GET?

10:52AM 13 MR. BORDEN: YES. IT SAYS THE STANDARD OR THE
10:52AM 14 AVERAGE OVERCHARGE IS X.

10:52AM 15 THE COURT: OKAY.

10:52AM 16 MR. BORDEN: AND HE RAN SOME TYPE OF --

10:52AM 17 THE COURT: AND THEN HE DID THOSE TWO, HE DID THOSE
10:52AM 18 TWO ANALYSES. AND WHAT DID HE DO WITH THE RESULTS OF THOSE
10:52AM 19 THAT YIELDED 16.7? DO YOU ADD THEM? DO YOU DIVIDE THEM? DO
10:52AM 20 YOU SQUARE ROOT THEM? WHAT DO YOU DO?

10:52AM 21 MR. BORDEN: HE USED REGRESSION ON THAT TO FIGURE
10:52AM 22 OUT. AND I'M LOOKING AT PARAGRAPH 97 OF --

10:52AM 23 THE COURT: YES, IF YOU COULD JUST POINT ME TO THE
10:52AM 24 REPORT THAT MS. GREICO, YOUR THIRD GRADE MATH TEACHER SAID SHOW
10:52AM 25 ME THE WORK, IF YOU JUST POINT IT OUT, I WILL LOOK AT IT.

1 DID WHAT HE WAS SUPPOSED TO DO WITH THE BEFORE AND AFTER
2 PERIOD, HE SAW THAT THERE WAS NO IMPACT, THERE WERE NO
3 OVERCHARGES OR CERTAINLY VERY, VERY LITTLE THAT HE COULD EVEN
4 SURMISE, SO HE GRABBED THE 16.7 PERCENT.

5 THAT'S THE DISTINCTION HERE, AND I THINK IT'S VERY
6 IMPORTANT FOR THE COURT TO UNDERSTAND.

7 MR. BORDEN: THE REPORT SAYS WHAT IT SAYS, AND HE
8 WALKS THROUGH HIS METHODOLOGY BEGINNING ON PARAGRAPH 95. ON 98
9 HE SAYS, "I HAVE USED A MARKET SHARE FOR SUNNY/SYNTA OF
10 40 PERCENT (WHICH LIKELY UNDERSTATES THE COMBINED SHARE OF
11 SUNNY AND SYNTA THUS CONSERVATIVE)."

12 AND THAT'S WHAT HE DID, HE TOOK THE LOWEST POSSIBLE
13 OVERCHARGE AND HE APPLIED IT TO THE 2001 TO 2005 PERIOD.

14 HE LOOKED AT DIFFERENT OVERCHARGES THAT HAPPENED AS THE
15 MARKET BEGAN TO CONSOLIDATE AS THE COURT IS ALREADY AWARE OF.

16 SO --

17 THE COURT: OKAY. GREAT.

18 MR. STAMBAUGH: THANK YOU VERY MUCH, YOUR HONOR.

19 THE COURT: THANKS VERY MUCH.

20 MR. BORDEN: THANK YOU, YOUR HONOR.

21 THE COURT: MATTER IS UNDER SUBMISSION. MAYBE I'LL
22 REACH OUT TO YOU FOR ADDITIONAL INFORMATION IF I NEED IT AS I
23 REVIEW IT. SO BE PREPARED FOR THAT.

24 MR. STAMBAUGH: VERY GOOD. THANK YOU VERY MUCH,
25 YOUR HONOR.

10:56AM

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MR. BORDEN: HAVE A GREAT AFTERNOON.

10:57AM

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THE COURT: YOU AS WELL. THANK YOU.

10:57AM

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(COURT CONCLUDED AT 10:57 A.M.)

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CERTIFICATE OF REPORTER

I, THE UNDERSIGNED OFFICIAL COURT REPORTER OF THE
UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
CALIFORNIA, 280 SOUTH FIRST STREET, SAN JOSE, CALIFORNIA, DO
HEREBY CERTIFY:

THAT THE FOREGOING TRANSCRIPT, CERTIFICATE INCLUSIVE, IS
A CORRECT TRANSCRIPT FROM THE RECORD OF PROCEEDINGS IN THE
ABOVE-ENTITLED MATTER.

A handwritten signature in black ink that reads "Irene Rodriguez". The signature is written in a cursive, flowing style with a large, decorative flourish at the end of the last name.

IRENE RODRIGUEZ, CSR, RMR, CRR
CERTIFICATE NUMBER 8074

DATED: SEPTEMBER 11, 2024